IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL WRIT PETITION NO.96 OF 2002

State of Maharashtra .. Petitioner

Versus

Santosh Shivram Khamkar .. Respondent

Mr.P.A.Pol, A.P.P. for State

Mr.Rajan Salvi for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th April, 2007.

P.C.

. Heard Mr.Pol, learned A.P.P.

2. This is a petition by the State challenging the judgement and order of the

Additional Sessions Judge, Raigad, Alibaug in Criminal Appeal No.33 of 2001.

3. By the impugned judgement and order the appeal came to be allowed. The appeal was preferred by the respondent - original appellant against an order passed by Assistant Conservator and Regional Forest Officer, Roha in Crime/297 of 2001 dated 3rd August 2001. The appeal was essentially for return of confiscated property. It is a Truck bearing No.MH-14-F-5754 which was confiscated by the Forest Authority. By the impugned order delivered on 3rd October 2001, the order of confiscation is set aside and the Truck is directed to be returned back to the owner on executing a bond of Rs.3 lakhs.

4. The only submission canvassed on behalf of the State is that the learned Judge completely misread and misconstrued section 61-B(2) of Indian Forest Act. Sectopm 61-B(2) of Indian

Forest Act (Maharashtra Amendment) reads thus:-

> "61-B(2): Without prejudice to the provisions of sub-section 1), no order confiscating any tool, boat, vehicle or cattle shall be made under section 61-A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised offficer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other notified forest produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use."

According to A.P.P. the section is clear inasmuch as the owner of the vehicle has to prove

that the vehicle which was used in commission of the alleged offence was being so used without his knowledge or connivance of his agent and person in charge of the vehicle. In his submission, there is no such material produced on record. On the other hand, all that the Additional Sessions Judge had before him was a statement orally made by the owner that the Driver who was driving the vehicle was employed by him only five to six days prior to the incident and, therefore, it cannot be said that he had knowledge of the truck being used for transporting forest wood in contravention of the provisions of the Forest Act. Learned A.P.P. invited my attention to the judgements which have been relied upon by the Additional Sessions Judge and the relevant statutory provisions.

5. Since the impugned order has not been stayed and nearly six years have lapsed from the date of passing of the said order by which time

the Truck must have been returned and in possession of the owner so also the owner - original appellant has not been appearing before me, in my view, the issue raised in the petition is academic. However, it is necessary to clarify that the observations and findings of the learned Sessions Judge so also her conclusion that the Driver concerned having been employed prior to five / six days of the incident shows that the knowledge or connivance of the owner is not established, cannot be said to be the position in all cases. Merely because a Driver is employed recently straight away a conclusion cannot be prima facie drawn. Everything would depend upon the facts and circumstances on each case. In such circumstances, while not approving the reasoning of the learned Judge with regard to the recent employment of the Driver, it would not be proper to go into the matter in any further details. Suffice it to state that the issue of interpretation of Section 61(b)(2) of the Indian

Forest Act in the context of recent employment of driver is kept open for decision in an appropriate case. Needless to state that disposal of this petition in this manner would not amount to this Court approving the conclusion of the learned Additional Sessions Judge. Petition disposed of accordingly.

(S.C.Dharmadhikari, J)